IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5183 OF 2004.
IN
CRIMINAL APPEAL NO.1441 OF 2004.

Nazim Ali S/o Johar Ali Behna. ..Applicant.

Versus.

The State of Maharashtra. ..Respondent.

Mr.Marwadi, advocate for the applicant.

Smt.V.R. Bhosale, APP for the State.

CORAM: S.B.MHASE &
ANOOP V. MOHTA, JJ.

DATE : DECEMBER 14, 2004.

P.C.:

1. Heard Mr.Marwadi, the learned counsel for the applicant & Smt.V.R. Bhosale, the learned APP for the State.

2. The incidence alleged is that the applicant was tenant of the first informant earlier. He had bad eye on the complainant and complainant therefore, asked him to vacate the said premises. Accordingly, 2-3 months prior to the incidence, the premises were vacated by the accused. Thereafter, these premises were given to the deceased. Complainant is also residing in the said house/premises. It is the case

of the prosecution that on the day of incidence, accused poured kerosine on the premises and set the premises on fire and in that fire, the deceased had died by burning. There is no direct evidence to establish that act of setting the house or premises on fire have been done by the accused. However, on the basis of the motive above referred and on the basis of fact that chappal of the accused is found at the place of incidence and that clothes which were recovered from the accused after three weeks were also having kerosine smelling, the Trial Court has convicted the accused. It is pertinent to note that even though there is recovery, panch for the discovery has not been examined for the reasons best known to the prosecution. It also appears that identity of the chappal of the accused is not established. This persuades us to grant suspension of the sentence. It is also the fact that during the trial, the accused was on bail and he has not misused the same. This fact also persuades us in granting bail during the pendency of the appeal. However, we desire to grant such benefit of bail on certain conditions. Therefore, following order is passed.

ORDER

(i) The sentence imposed by the Additional Sessions Judge, Greater Bombay in Sessions Case No.163 of 2000 by its Judgment dated 4/9/2004 is hereby suspended till the final disposal of this appeal.

(ii) The applicant/accused be released on his furnishing P.R.bond of Rs.20,000/-with two sureties for the said amount.

(iii) The applicant/accused shall report to the concerned police station once in a week i.e. on Sunday in between 10 to 11 a.m.

(iv) He shall submit his address to this Court after his release within a period of one week and he shall not change the said address unless permitted by this Court.

(v) He shall not tamper with evidence and shall not in any manner threaten the complainant.

3. Application accordingly disposed of.

(ANOOP V. MOHTA,J.) **(S.B.MHASE,J.)**

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